

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 19-90038 and 19-90039

ORDER

THOMAS, Chief Judge:

Complainant, a federal agency employee, has filed a complaint of judicial misconduct against two district judges. Review of this complaint is governed by the Rules for Judicial Conduct and Judicial-Disability Proceedings (“Judicial-Conduct Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 et seq., and relevant prior decisions of the Ninth Circuit Judicial Council. In accordance with these authorities, the names of complainant and the subject judges shall not be disclosed in this order. See Judicial-Conduct Rule 11(g)(2).

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, following review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling,

or is frivolous or lacks sufficient evidence to raise an inference of misconduct.

See 28 U.S.C. § 352(b)(1)(A)(i)-(iii). Judicial misconduct proceedings are not a substitute for the normal appellate review process, and may not be used to seek reversal of a judge's decision, to obtain a new trial, or to request reassignment to a different judge.

Complainant alleges that the judges violated his civil rights and his right to privacy. A limited inquiry revealed that the subject judges in this matter discovered that complainant, a federal agency employee with access to the courthouse, had a prior felony conviction for theft of government property. Concerned about security, one of the judges alerted the United States Marshals. The Marshals' office then advised the complainant's agency, who assigned complainant to work from home and not on the courthouse premises pending an investigation. The judges took no part in the decision to alert the agency, nor did they further investigate the matter. The judge's decisions made with regard to courthouse security are administrative functions, not judicial functions. See, e.g., In re Complaint of Judicial Misconduct, 366 F.3d 963, 965 (9th Cir. 2004) (Personnel decisions are administrative functions, not judicial functions.). As to alleged misconduct arising from administrative functions, complainant must allege more than a disagreement with the judge's administrative decision. See In re

Complaint of Judicial Misconduct, 726 F.3d 1060, 1061 (9th Cir. 2013). The complaint must document conduct by the judge that is wrongful, independent of whether the judge's decision is correct. Here, it was not wrong for the judges to ask the Marshals to check into a matter of court security. Because complainant has not alleged behavior that is “prejudicial to the effective and expeditious administration of the business of the courts,” this charge must be dismissed. 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

Complainant also alleges that the judges were biased against him due to his race. However, having a discussion about security concerns with a fellow judge or with the United States Marshals does not amount to proof of bias or other misconduct, and complainant provides no objectively verifiable evidence to support these speculative allegations, which are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 715 F.3d 747, 749 (9th Cir. Jud. Council 2013) (“adverse rulings, standing alone, are not proof of misconduct”); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“complainant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.